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**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Federal-State Joint Board on Universal Service ) WC Docket No. 09-197  
 )  
Q LINK WIRELESS LLC )  
 )  
Petition for Forbearance from 47 U.S.C. § )  
214(e)(5) and 47 C.F.R. § 54.207 )

**Q LINK WIRELESS LLC PETITION FOR FORBEARANCE FROM  
47 U.S.C. § 214(e)(5) AND 47 C.F.R. § 54.207**

Lance J.M. Steinhart  
Lance J.M. Steinhart, P.C.  
Attorneys at Law  
1725 Windward Concourse, Suite 150  
Alpharetta, Georgia 30005  
(770) 232-9200 (Phone)  
(770) 232-9208 (Fax)  
E-Mail: [lsteinhart@telecomcounsel.com](mailto:lsteinhart@telecomcounsel.com)

*Attorneys for Q LINK WIRELESS LLC*

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**I. INTRODUCTION**

Pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> Q LINK WIRELESS LLC (“Q LINK”) petitions the Federal Communications Commission (“Commission”) to forbear from enforcing Section 214(e)(5) of the Act and Section 54.207 of the Commission's rules<sup>2</sup> in connection with Q LINK’s limited designation as an eligible telecommunications carrier (“ETC”) to participate in the federal Lifeline program. More specifically, Q LINK seeks such forbearance with respect to (1) those areas where Q LINK has been previously approved by state commissions for Lifeline ETC status as identified in Exhibit 1, (2) those areas where Q LINK has Petitions for Lifeline ETC status pending as identified in Exhibit 1, and (3) any remaining states where Q LINK has not yet filed for Lifeline ETC status, pursuant to 47 U.S.C. § 214(e)(2).

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<sup>1</sup> 47 U.S.C. § 160.

<sup>2</sup> 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207

The Commission recently released an Order addressing similar petitions for forbearance filed by Cricket Communications (“Cricket”) and NTCH.<sup>3</sup> In this Order, the Commission stated:

These petitions seek forbearance from the requirement that the service area of a competitive eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area, for the limited purpose of becoming designated as Lifeline-only ETCs.

We conclude that forbearance in these limited circumstances furthers the Act's and Commission's goals of promoting access to affordable service for low-income consumers by reducing barriers to carriers participating in the Lifeline program. Moreover, we find that application of the conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules in this limited circumstance is not necessary to ensure that rates remain just and reasonable or to protect consumers.<sup>4</sup>

The forbearance Q LINK seeks is identical to that given in the Cricket Order. The Cricket Order, however, declined to extend the forbearance to all similarly situated parties. As a result, Q LINK is seeking forbearance.

Sections 214(e)(5) and 54.207 are intended to prevent recipients of high-cost universal service support from engaging in “cream-skimming”—*i.e.*, the practice of targeting only the lower-cost portions of a rural study area. The Commission has explained that, where a competitive ETC obtains support that is based on the cost of serving particularly high-cost portions of an incumbent carrier’s study area without actually serving those areas, it can distort competition and potentially undermine universal service.<sup>5</sup> Thus, Sections 214(e)(5) and 54.207 effectively require an ETC to either: (i) serve the entirety of relevant rural study areas; or (ii) complete a lengthy and complex series of boundary-modification proceedings at the federal and

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<sup>3</sup> *In the Matter of Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S. C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, FCC 11-137, released Sept. 16, 2011 (“the Cricket Order”).

<sup>4</sup> *Id.*, ¶¶ 1 and 2, footnote omitted.

<sup>5</sup> *See, e.g., Virginia Cellular, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 1563, at ¶ 32 (2003). *See also Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, at ¶ 172 (1996).

state levels to demonstrate that the provision of service to a subset of the incumbent carrier's service territory would not result in cream-skimming or otherwise harm the public interest.

Critically, however, concerns regarding cream-skimming have no application in the context of Lifeline service, as the Commission has made clear. Carriers that receive support only for serving low-income consumers, as opposed to serving high-cost areas, have no incentive or ability to engage in cream-skimming. Accordingly, because Q LINK does not seek high-cost support, but rather seeks designation as an ETC only for the limited purpose of receiving low-income support (i.e. Lifeline), enforcement of Sections 214(e)(5) and 54.207 would be unnecessary and would waste federal, state, and Company resources. In fact, the requested forbearance would strongly *promote* the universal service objectives embodied in the Act and reflected in Commission policy.

Q LINK is seeking, or has sought and has been authorized by the Commission and by state commissions, designation as a Lifeline ETC within Q LINK's service footprint (which is congruent with the wireless coverage of its underlying carrier, Sprint). Many state commissions have regarded previous FCC orders as implicit authorization for competitive ETCs to provide Lifeline service in RLEC areas without application of the study area redefinition requirement. Numerous state commissions have authorized multiple Lifeline-only ETCs to operate in partial RLEC study areas. Kansas has redefined service area.<sup>6</sup> In all cases, Q LINK has been operating within its licensed area and in compliance with its designation orders. Q LINK has been granted designation as an ETC in Wisconsin, which granted designation in partial RLEC service areas conditioned on the carrier obtaining forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. §

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<sup>6</sup> The Kansas Corporation Commission has redefined the study area of several RLECs in Kansas. See e.g. *In the Matter of i-wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Kansas*, Docket No. 12-IWRZ-848-ETC, issued September 6, 2012.

54.207 from this Commission.<sup>7</sup> Accordingly, given the release of the Cricket Order, and pursuant to Q LINK's Wisconsin ETC Order, Q LINK is hereby filing the instant Petition for forbearance from application of the rural study area rules.

## **II. BACKGROUND**

Q LINK provides prepaid wireless services on a common carrier basis, offering customers wireless voice, messaging, and data plans without a fixed-term contract or a credit check. Q LINK has received Compliance Plan approval<sup>8</sup> and has been authorized as a Lifeline ETC in 10 states.

Under Section 214(e)(1) of the Act, an ETC must offer supported services and advertise the availability of and charges for such services "throughout the service area for which the designation is received." Section 214(e)(5) of the Act provides that in "the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States ... establish a different definition of a service area for such company."<sup>9</sup> Section 54.207 of the Commission's rules provides a series of steps to follow at the federal and state level to ensure that cream-skimming or other harm to the public interest does not occur from the provision of service to these smaller areas.<sup>10</sup> These steps often take a great deal of time to complete and are an expense and time burden on both the carrier and the regulator.

Q LINK's coverage area in many states overlaps with a number of rural study areas, although the underlying Sprint network over which Q LINK's traffic is carried does not serve the entirety of many of those study areas. As a result, Sections 214(e)(5) and 54.207, if enforced,

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<sup>7</sup> See *Application of Q LINK WIRELESS LLC for Designation as an Eligible Telecommunications Carrier*, Docket No. 9597-TI-100, Order (June 11, 2012) ("Wisconsin ETC Order").

<sup>8</sup> See *Q LINK WIRELESS LLC's Third Amended Compliance Plan*, WC Docket Nos. 09-197, 11-42 (filed July 30, 2012) ("Compliance Plan"); *Public Notice*, DA 12-1286 (rel. Aug. 8, 2012) ("Compliance Plan Order").

<sup>9</sup> 47 U.S.C. § 214(e)(5).

<sup>10</sup> 47 C.F.R. § 54.207.

would preclude Q LINK from operating as a Lifeline ETC until the Commission and the states could redefine Q LINK's service areas to be narrower than the relevant rural study areas—even though the Commission has made clear that no “cream-skimming” analysis is necessary where an ETC applies only for low-income support.<sup>11</sup> Requiring the Commission and the states to go through the process of redefining RLECs' study areas would be a waste of resources and, in those areas which have already been designated by the states and in which Q LINK has been offering service and has a customer base, could disrupt the Lifeline service of Q LINK customers if their service would need to be terminated while a redefinition of the study area is pending at the state level and the Commission.

### **III. THE FORBEARANCE STANDARD**

Section 10(a) of the Act provides that the Commission shall forbear from applying any provision of the Act to a telecommunications carrier if the Commission determines that (i) enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) forbearance from applying such provision is consistent with the public interest.<sup>12</sup> Section 10(b) of the Act provides that the Commission, when evaluating whether forbearance would be consistent with the public interest,

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<sup>11</sup> See *Virgin Mobile USA, L.P.*, Order, 24 FCC Rcd 3381 (2009) (“*Virgin Mobile Forbearance Order*”), at ¶ 38 n. 101, where the Commission stated, “In addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking Lifeline support only.”

<sup>12</sup> 47 U.S.C. § 160(a).

shall consider whether such forbearance would promote competitive market conditions or enhance competition.<sup>13</sup>

#### **IV. DISCUSSION**

Forbearance from enforcement of Sections 214(e)(5) and 54.207 in connection with Q LINK's Lifeline ETC authorizations is appropriate and, indeed, required because: (i) enforcement is not necessary to ensure that Q LINK's rates, terms and conditions are just, reasonable, and non-reasonably discriminatory; (ii) enforcement is not necessary to protect consumers; and (iii) forbearance is consistent with the public interest. It is also fully consistent with the Commission's actions in its Cricket/NCTH Order and necessary to ensure competitive neutrality in the Commission's interpretation of its rules.

Enforcement of Sections 214(e)(5) and 54.207 is not necessary to ensure that Q LINK's rates, terms and conditions are just, reasonable and non-discriminatory. These sections have no bearing on Q LINK's relationship with its customers. Instead, these sections deal with ETCs' service in RLEC areas and are designed to prevent cream-skimming by ETCs and to avoid complicating the RLEC calculations of high-cost support.<sup>14</sup> Furthermore, forbearance would not prevent the Commission from enforcing Section 201 or Section 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.<sup>15</sup>

Customers are not harmed if forbearance is granted. Q LINK is or soon will be making Lifeline service available to customers in the RLEC areas in question. This gives these consumers access to lower rates and provides a means of communication many would not

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<sup>13</sup> 47 U.S.C. § 160(b).

<sup>14</sup> See *Virgin Mobile Forbearance Order* at ¶ 38 n.101.

<sup>15</sup> 47 U.S.C. §§ 201, 202.

otherwise be able to afford. Thus, enforcement of Sections 214(e)(5) and 54.207 is not necessary to protect consumers.

Finally, the public interest is promoted through forbearance. Forbearance would allow Q LINK to continue to offer Lifeline services in RLEC areas where it has already entered on a good faith basis pursuant to the orders of state commissions. The public interest is not served by withdrawing Lifeline service from Q LINK from those customers who have already subscribed and established a successful relationship with Q LINK. These discounted services provide a valuable communications channel for these established customers. The prepaid nature of Q LINK's wireless service offers attractive Lifeline options that may not otherwise be available to low-income consumers.

Q LINK plays a crucial part in the marketplace by allowing many deserving citizens who cannot qualify for or otherwise afford the services provided by other communications carriers to enjoy the benefits of wireless communication. Q LINK operates under the conditions of its FCC-approved Compliance Plan and state ETC approvals – conditions which will not be changed by the grant of the forbearance requested herein. Forbearance from enforcement of Sections 214(e)(5) and 54.207 will simply allow Q LINK to continue to provide quality Lifeline services within RLEC areas where it already operates on a good faith basis pursuant to state commission Orders, or expedite entry into new areas to be approved by state commissions.

## **V. ANTI-DRUG ABUSE CERTIFICATION**

Q LINK is not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.

## VI. CONCLUSION

For the reasons set forth above, Q LINK respectfully submits that forbearance from the enforcement of Sections 214(e)(5) of the Act and 54.207 of the Commission's rules against Q LINK is appropriate and required. Q LINK respectfully requests that the Commission grant this Petition expeditiously, so that low-income customers can benefit from the variety of high-quality calling plans provided by Q LINK without any unnecessary delay.

Respectfully submitted,

*/s/ Lance J.M. Steinhart*

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Lance J.M. Steinhart  
Lance J.M. Steinhart, P.C.  
Attorneys at Law  
1725 Windward Concourse, Suite 150  
Alpharetta, Georgia 30005  
(770) 232-9200 (Phone)  
(770) 232-9208 (Fax)  
E-Mail: [lsteinhart@telecomcounsel.com](mailto:lsteinhart@telecomcounsel.com)

*Attorneys for Q LINK WIRELESS LLC*

December 21, 2012

## **APPENDIX A**

### **DESCRIPTION OF RELIEF SOUGHT**

Q LINK hereby provides the following information required by Section 1.54(a) and (e) of the Commission's rules, 47 C.F.R. §§ 1.54(a), (e):

- (1) Q LINK petitions the Commission to forbear from enforcing Section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and Section 54.207 of the Commission's rules, 47 C.F.R. § 54.207.
- (2) Q LINK seeks forbearance on behalf of itself only.
- (3) Q LINK seeks forbearance with respect to its provision of Commercial Mobile Radio Service ("CMRS").
- (4) Q LINK seeks forbearance with respect to (i) those areas in Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia where Lifeline ETC status is pending with the Commission; and (ii) those areas in other states where Q LINK has sought, or will seek, designation as a Lifeline ETC from the relevant state commission pursuant to Section 214(e)(2) of the Act.

Q LINK has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

All supporting data upon which Q LINK intends to rely, for purposes of this petition, are included in the preceding narrative. Q LINK is not relying on any separate market analysis, and, as such, Q LINK is not attaching a separate appendix with supporting data.

**EXHIBIT 1**  
**Q LINK ETC Designations and RLEC Coverage**

State ETC Designations	Docket Number	Effective Date	RLEC Coverage Included
Colorado	11A-985T	7/30/12	No
Maryland	TE-10643	12/21/11	Yes
Michigan	U-16940	8/28/12	Yes
Missouri	RA-2012-0205	10/6/12	Yes
Nevada	12-01023	11/6/12	No
Oklahoma	201 200103	10/16/12	No
Texas	40681	10/11/12	No
Utah	12-2549-01	12/14/12	Yes
West Virginia	11-1728-C-PC	9/20/12	Yes
Wisconsin	9597-TI-100	6/12/12	Yes

Pending ETC Petitions	Docket Number
<u>FCC</u>	
Alabama	WC Docket 09-197
Connecticut	WC Docket 09-197
Delaware	WC Docket 09-197
District of Columbia	WC Docket 09-197
Florida	WC Docket 09-197
New Hampshire	WC Docket 09-197
New York	WC Docket 09-197
North Carolina	WC Docket 09-197
Tennessee	WC Docket 09-197
Virginia	WC Docket 09-197
Arizona	T-20824A-11-0446
Arkansas	12-005-U
California	Advice Letter No. 1
Georgia	34878
Illinois	12-0095
Kansas	13-QLWZ-174-ETC
Kentucky	2012-00473
Louisiana	S-32238
Maine	2012-00458
Massachusetts	DTC 11-18
Minnesota	11-1249
Mississippi	11-UA-387
New Jersey	T012090827
New Mexico	12-00389-UT
Ohio	12-2379-TP-UNC
Pennsylvania	P-2011-2275830
South Carolina	2012-15-C